to say that there is any general rule, nor do I mean to say that in this case it would not have been well, under the particular circumstances (namely, of two previous remands), if the Judge had stated carefully and clearly the reasons upon which his decision was based; but I do mean to say that the decision which he has now recorded is one legally sufficient and one on which no round of special appeal can lie.

We now come to the consideration of the reasons on which the Judge has thrown the plaintiff out of Court. The Judge in effect I understand to have found, as the Subordinate Judge in effect also finds, that the alleged purchase by the plaintiff in execution of a decree against Sooambur Singh was not, in fact, a purchase by the plaintiff at all; that the execution against Sooambur Singh was not a *bonâ-fide* genuine execution, but that previously the right, title, and interest of the decree-holder in that decree had been purchased *benamee* on behalf and for the benefit of Sooambur Singh himself; and that the sale which took place in pursuance thereof was a sham sale, the person furnishing the funds and acting throughout being Sooambur Singh himself. Probably it would be held in such a case that, by the purchase on behalf of Sooambur Singh and with his money, the decree had, in fact, been extinguished; but it is sufficient to say that by the findings the plaintiff did not acquire anything, did not buy the title to this property. The person who really purchased was Sooambur Singh himself; and consequently the person who obtained the decree in the rent-suit could properly sell either the estate, or the right, title, and interest of Sooambur Singh in that estate. That being so, I think the Courts below were quite right in dismissing his suit.

And I should say that the finding has not been impugned on the ground that there was no evidence to support it There was evidence, and the Court below found upon that evidence in favor of the defendant. I do not think we are in a position to say that it was not justified in coming to that conclusion upon that evidence. What our own conclusion would have been if we heard the case as a regular appeal is another question. I think the special appeal must be dismissed with costs.

It was remarked, and with some plausibility, by the learned Counsel who appeared for the appellant, that the plaintiff had been, by the wrongful act of the Collector, unfairly placed in the disadvantageous position of plaintiff, whereas, but for that violent and improper proceeding, his client would have been in the position of a defendant. On that it seems to me sufficient to say that, if the case was so the plaintiff had only to avail himself of the remedy provided by Section 15, Act XIV. of 1859, and to bring his suit as a simple possessory suit. But he thought fit to come into Court with a civil suit in the usual way, and therefore undertook to prove the title which he advanced, and must take the consequences.

Ainslie, J.—I concur.

The 9th December 1870.

Present:

The Hon'ble E. Jackson and Onookool Chunder Mookerjee, *Judges.*

Notice of enhancement—Ryots—Middlemen.

Case No. 1412 of 1870 under Act X. of 1859.

Special Appeal from a decision passed by the Judge of the 24-Pergunnahs, dated the 14th April 1870, affirming a decision of the Deputy Collector of Busseerhaut, dated the 18th October 1869.

Kalee Prosunno Ghose and another (Defendants), *Appellants,*

versus

Hurish Chunder Dutt and others (Plaintiffs), *Respondents.*

Baboo Oopendro Chunder Bose for Appellants.

Baboos Kalee Prosunno Dutt and *Kheltur Mohun Mookerjee* for Respondents.

Where a party who was not personally a cultivator of the land, but held a large jumma with a number of ryots below him, was treated in a notice of enhancement under Clause 1, Section 17, Act X. of 1859, as an ordinary ryot having a right of occupancy, it was held that the notice was not on that account illegal or informal.

Jackson, J.—THIS is a suit for enhancement of rent and for arrears of rent at an enhanced rate. Both the Lower Courts have decreed the enhanced rate, and a special appeal has been preferred from the decision of the Lower Appellate Court.

A great many points are taken in special appeal. In the first place, it is said that the notice is bad in law, because it does not distinctly describe the status of the ryot; and also because every word of the first clause of Section 17, Act X. of 1859, is not included in it. On this point we find the facts of the case are these: The defendant admittedly is a tenant holding without any written engagement. The notice was served upon him treating him as an ordinary ryot having a right of occupancy, and called upon him to pay the rent at a rate paid by the neighbouring ryots under Clause 1, Section 17 of Act X. of 1859. On the trial it appeared that he was not exactly of the class of ordinary ryots having rights of occupancy, but that he held a very large *jumma* with a number of ryots below him, and that he was not a personal cultivator of the land. The Court, therefore, treated him as a *ganteedar*, and required him to pay the same rate of rent which the *ganteedars* in the village pay, namely, Rupees 1-4 annas per beegah. It is now attempted to be made out upon this that the defendant is a *ganteedar*. But because he has been allowed to pay *ganteedaree* rate, it does not by any means follow that he comes under the denomination of *ganteedar*. There seems to be nothing informal or illegal in the notice which has been served upon him.

Then it is said that there is no evidence to show that the *ganteedars* of the village pay Rupees 1-4 per beegah. We have had all the evidence read out to us, and we find that there is certainly evidence to show that that is the rate generally paid by the ganteedars. The plaintiff certainly claimed very much larger rate, but the Courts have acted very properly under the circumstances, looking to the manner of the holding of the defendant, to make him pay the *ganteedaree jumma*.

It is also said on special appeal that the witnesses do not mention the number of beegahs of each description of plots of land in the possession of the defendant. It is true that the witnesses do not do so. But I think that it is impossible to obtain any person to depose that there are so many *beegahs* of each class of land in the possession of his neighbour. It is a matter which may possibly be known to the defendant himself, and it is for him to show the number of beegahs in each plot. But it does not follow that there is no evidence upon this point. In the first place, there is the allegation of the plaintiff which is not denied by the defendant; and in the second place, this allegation has been enquired into by an Ameen who went to the spot, and measured the land.

Another objection taken on special appeal is that the Court below ought to have decided the point, whether the petitioner, defendant, was holding the excess area as a tenant or as a trespasser. Reading this sentence as put down in the grounds of special appeal, it seems to me quite unintelligible. But is said here that it was intended thereby to allege that the defendant had claimed certain lands as belonging to other jummas and to his lakheraj land, and that that question had not been inquired into. We find, however, that it has been thoroughly looked into, and that that land has been released, and no rent has been fixed for it.

An objection was also taken in the matter that no decision has been passed with regard to the uniform payment of rent. But it appears that in a former appeal before the Judge, a decision was passed upon the point of uniform payment of rent, and the present Judge, therefore, very properly considered it unnecessary to inquire into the point any further. There seems to be, therefore, no ground for interfering with the judgment of the Lower Appellate Court, either in the matter of rate or in the matter of notice.

But there still remains one question, *viz.*, as to the exact quantity of land in the possession of the defendant. An issue was raised on this question through the whole of this litigation, the plaintiff claiming that the land should be measured with a rod of 80 cubits, the defendant alleging that it ought to be measured with a rod of 90 cubits. The Judge says that it is not necessary to inquire into this point, because as he says no rent is claimed for any excess area. It seems to us, however, that it is impossible to decide this case without determining this point, because it is impossible to determine the number of *beegahs* in the defendant's possession without first determining it. There is evidence on both sides, not only oral, but also documentary, as to the size of the rod prevalent in this part of the country. All that evidence must be considered in coming to the conclusion as to what size of beegah must pay rent at the rate of Rupees 1-4 annas. This point ought to have been tried by the Lower Court; but as the plaintiff is willing to take the enhanced rate decreed at the larger beegah, it is not necessary to remand the case. A decree will be drawn up in this office, calculating the number of beegahs in the possession of the defendant by a rod of 90 cubits; and also

deducting the *puteet* lands for which the plaintiff seems to have claimed no rent.

The decree of the Lower Courts will be modified to that extent.

Parties will bear their own costs in this suit.

Mookerjee, J.—I concur.

The 19th December 1870.

Present:

Hon'ble L. S. Jackson and F. A. Glover, *Judges.*

Death of appellant—Representation—Letters of administration.

Case No. 54 of 1870.

Regular Appeal from a decision passed by the Judge of Sarun, dated the 28th December 1869.

Munnoo Lall (one of the Defendants), *Appellant,*

versus

Saheb Perhlad Sein (Plaintiff) and others (Defendants), *Respondents.*

Baboo Kalee Prosunno Dutt for Appellant.

Baboo Mohesh Chunder Chowdhry for Respondents.

An appeal having come on for hearing, the death of the appellant was intimated to the Court, and the case allowed to stand over. It was again set down for hearing nearly six months after, and an order made that it should be brought up a fortnight later. On its being called up again, a petition was presented on the part of the Administrator-General for a month's postponement, on the ground that, although letters of administration had been granted, the requisite funds had not been raised.

HELD that, the appeal having been filed and the vakeel instructed and paid, the Administrator-General would have been allowed to appear, although regular letters had not been taken out; but as the application had not been made within reasonable time, the appeal was dismissed.

Jackson, J.—THE decision of the Zillah Judge in this case was passed on the 28th December 1869. The appeal was preferred on the 4th April of the present year. The case, it seems, came on for hearing on the 18th July last, when it stood over for this, amongst other reasons, that the death of the appellant was then intimated to the Court. The case was again set down for hearing on the 5th of this month, and an order was made—"Let this case be brought up on the "19th instant, and by that time, if no one ap- "pears to represent the appellant, the ap- "peal will be dismissed." Now, the case being called up again to-day, a petition is presented on the part of the Administrator-General, who applies that the case may stand over again for one month on the ground that, although the Court has granted letters of administration upon the application of the parties made so long ago as the month of August last, the requisite funds have not been raised, and the Administrator-General does not find himself in a position to act. The regular letters of administration have not been taken out, but an order has been granted.

Now, in this case, the appeal has been actually filed, and the vakeel, I understand, has received his instruction and also his fee; and we should have had no hesitation in permitting the Administrator-General to appear in this case, although regular letters of administration have not been taken out; but as it appears to me that the application has not been made within reasonable time, by any person claiming to be the legal representative of the deceased appellant, I think the appeal ought to be dismissed with costs chargeable to the estate of the deceased.

Glover, J.—I concur.

The 20th December 1870.

Present:

The Hon'ble L. S. Jackson and F. A. Glover, *Judges.*

Act X. of 1859—Execution-sale—Revenue Courts—Jurisdiction.

Case No. 119 of 1870.

Regular Appeal from a decision passed by the Subordinate Judge of Gya, dated the 22nd March 1870.

Tekaet Bhao Narain Deo (Defendant), *Appellant,*

versus

The Court of Wards on behalf of the estate of the late Maharajah Ram Narain Deo (Defendant), *Respondent.*

Mr. R. E. Twidale for Appellant.

Baboos Unnoda Pershad Banerjee and *Juggodanund Mookerjee* for Respondent.